

ENVIRONMENTAL QUALITY COMMISSION

EQC Public Meeting
June 21, 2000
Room 111, Capitol Annex, Frankfort

The Kentucky Environmental Quality Commission (EQC) held a public meeting on June 21, 2000 at 1:00 at the Capitol Annex in Frankfort, Kentucky. Commissioners present were Chair Aloma Dew, Vice-Chair Betsy Bennett, Patty Wallace, Serena Williams, and Gary Revlett. EQC staff present was Acting Director Scott Richards, Erik Siegel, and Frances Kirchhoff. There were approximately 20 people in attendance.

Chair Dew began by introducing Bruce Scott, Branch Manager of the Kentucky Pollution Discharge Elimination System (KPDES) Program in the Division of Water. Mr. Scott gave an update of the Natural Resources and Environmental Protection Cabinet's Confined Animal Feed Operations (CAFO) regulation (401 KAR 5:072).

Since the emergency regulation filed in February, 2000 is due to expire August 18, the Cabinet filed its intent to promulgate a replacement regulation, 401 KAR 5:072 with the Legislative Research Commission on May 12. This regulation differs only from the emergency regulation currently in effect in two areas: 1) the requirement for having permanent litter storage structures in place has been set for October, 2001, the same date as the established in the Agriculture Water Quality Plan; and 2) a clarification was made on the siting of litter storage structures at poultry CAFOs existing as of February 14, 2000. These structures would be exempt from the setbacks, because many existing poultry operations are located closer to various features than the regulations would otherwise allow.

The Cabinet anticipates filing a final regulation by mid-August. If that occurs, the regulation would go before the Administrative Regulation Review Subcommittee (ARRS) for approval in September 2000. Mr. Scott informed the Commission that the Farm Bureau, other commodity groups, and two individuals filed a lawsuit against the Cabinet's emergency regulation on June 14. Arguments were heard by Judge Crittendon on June 19 to obtain injunctive relief from the regulation and the matter has been moved to a latter date in order for the Plaintiffs to obtain additional affidavits on the matter. No date was given for the next court appearance.

Discussion followed the presentation. Various questions were asked including the following.

Question: Commissioner Williams: How will this regulation be enforced

Answer: Mr. Scott responded through KPDES permits.

Question: Commissioner Dew: Do the regulations address litter and dead animals

Answer: Mr. Scott responded as part of these permits these operations will have a comprehensive nutrient management plan which will address litter and dead animal disposal.

Question: EQC Staff Erik Siegel: Is the current staff big enough to conduct the inspections

Answer: Mr. Scott responded that he was not able to answer that question and should be made to Commissioner Logan.

Patty Wallace made a motion to approve the regulations and to send a letter strongly supporting the proposed regulations and commending Governor Patton and Secretary Bickford for their efforts to address these issues. Serena Williams seconded the motion. Gary Revlett commented that he is not certain that setbacks are the proper way to address this kind of environmental issue. Mr. Revlett believes that the issue should be addressed by science, not an arbitrary distance. The regulations suggest that if you have a distance of 499 feet, you have a bad environmental problem, but if the distance is 501 feet, you have no problem. Mr. Revlett supports the regulation as it written, but he maintains his concerns regarding the setbacks and thinks more efforts are should be made to develop performance-based standards for these operations. The motion passed with three yes votes, zero no votes, and two commissioners (Aloma Dew and Betsy Bennett) abstained from voting due to a conflict of interest.

Next, Chair Dew introduced Bill Kovacic, Director of the Office of Surface Mining (OSM), Lexington Field Office. Mr. Kovacic gave a summary of the Final Report÷An Evaluation of Approximate Original Contour and Post-Mining Land Use in Kentucky. Commissioners received copies of the report. The report states that OSM is committed to ensuring that state programs contain requirements that are no less effective than the Federal requirements and the programs are implemented properly. State and federal surface mining laws generally require a site after mining to be returned to its approximate original contour (AOC). In certain circumstances an applicant may obtain a variance for the AOC requirement. In connection with this variance, a critical issue is the appropriateness of the proposed post-mining land use. OSM has been working with the Kentucky Department for Surface Mining Reclamation and Enforcement (DSMRE) to improve Kentucky's administration of its approved program in two areas. 1) the standards used by DSMRE in evaluating whether a particular post-mining land configuration constitutes a return to AOC; and 2) the post-mining land uses which DSMRE approves when it grants a waiver from the AOC requirement. Subsequent reviews of the DSMRE program identified a minor aspect of the requirements for steep slope mining operations that is less stringent than the Federal requirements. DSMRE is in the process of correcting that deficiency. OSM is working with the Kentucky and other states in the Appalachian Region to ensure that these mining methods are conducted properly and consistently with the approved state programs. OSM will continue performing periodic evaluations to reassess Kentucky's mountaintop mining requirements in order to ensure that the approved standards are properly enforced throughout the region. Carl Campbell, Commissioner of the DSMRE made positive comments concerning the work of DSMRE and that DSMRE is taking action to respond to the problems identified in the report.

Next on the agenda was Gene Blair, Supervisor of the Environmental Response Team (ERT) in the Division of Water, and Wayne Davis, Environmental Section Chief, of the Department of Fish and Wildlife Resources. Both Mr. Blair and Mr. Davis gave an update of two recent major spills in Kentucky. Mr. Blair spoke first about the Marathon/Ashland pipeline break and oil spill clean up in Clark County. He showed a video presentation prepared by Marathon/Ashland of the clean-up efforts. Due to the quick response of local DES officials, the Clark County Department of Transportation and others, the oil spill of 11,664 barrels or 489,000 gallons was contained very quickly. What might have been a very serious problem resulted in minimal damage. More than 10 thousand tons of soil and products were removed, and 1 million gallons of oil/water mixture was removed.

Next, Mr. Blair showed a video of the Anderson County/Wild Turkey fire and subsequent bourbon spill. It was estimated that 700,000 gallons of bourbon either burned or entered the Kentucky River. The massive slug of bourbon and its reaction with algae in the Kentucky River caused a massive fish-kill. No numbers regarding the number of fish killed were available. But several species of paddlefish, buffalo, carp, bass, bluegill, sunfish, walleye, stripe, large mouth bass, sturgeon, blue sucker, and moon eye were significantly affected. Mr. Davis said it might be impossible to restock the river with the diverse number of fish that were killed. He believes that it will take quite some time for fish in Kentucky River tributaries and the Ohio River to make their way back to the main stream and repopulate the river.

Under other Betsy Bennett made a motion to approve the minutes from the May 18th meeting. Gary Revlett seconded minutes. The motion passed on voice vote.

Ms. Kirchhoff noted that EQC's budget looks good with 94% of the year lapsed and 93% of the budget expended.

Dates were picked out for the EQC field trip, August 28-29.

Scott Richards mentioned that the EQC has a forum planned for September at Northern Kentucky University on urban sprawl, air and water issues. The staff will notify the commissioners on the date and place of the meeting in August.

The Commissioners welcomed EQC's Executive Director Leslie Cole and her daughter Katie Skillman to the meeting.

With no further business the meeting adjourned at 4:00 pm.

Signed

Date